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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

IBRAHIM BIMABDULHAKI BROWN,

Defendant and Appellant.

B239819

(Los Angeles County
Super. Ct. No. KA094247)

APPEAL from a judgment of the Superior Court of Los Angeles County. Bruce F. Marrs, Judge. Affirmed as modified.

Renee Paradis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Erika D. Jackson, Deputy Attorneys General, for Plaintiff and Respondent.

Ibrahim Brown pled no contest to one count of receiving stolen property in violation of Penal Code section 496, subdivision (a). On appeal, the parties agree the trial court incorrectly calculated an award of presentence conduct credits. However, they disagree on the number of days of conduct credit the trial court should have awarded, based on conflicting interpretations of Penal Code section 4019, subdivision (h).¹ We conclude Brown is entitled to 107 additional days of conduct credit, modify the judgment accordingly, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Brown's appeal concerns only the trial court's calculation of presentence custody credits, thus we only briefly summarize the relevant background. On May 5, 2011, Brown was arrested when police pulled him over in a traffic stop and discovered stolen laptops in the car he was driving. The computers had been stolen that morning from an elementary school. The People charged Brown with one count of receiving stolen property. The People alleged a gang enhancement under section 186.22, subdivision (b)(1)(A). The People also alleged Brown had suffered three prior serious or violent felony convictions within the meaning of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). In March 2012, Brown pled no contest to receiving stolen property, admitted the gang enhancement allegation, and admitted he had suffered one prior strike, one prior conviction within the meaning of section 667, subdivision (a)(1), and one prior conviction within the meaning of section 667.5, subdivision (b).

The trial court sentenced Brown to a state prison term of 12 years. The court awarded Brown 351 days of presentence custody credits, consisting of 306 days of actual custody and 45 days of conduct credits.

¹ All further statutory references are to the Penal Code.

DISCUSSION

I. Brown is Entitled to 107 Additional Days of Conduct Credit

Brown contends, and the People concede, that the trial court's award of 45 days of custody credits was incorrect. We agree with the parties. It appears the trial court calculated custody credits at 15 percent of actual custody time, pursuant to section 2933.1. Under that section, a defendant convicted of a violent felony within the meaning of section 667.5 may accrue only 15 percent of actual custody time as conduct credits. However, Brown's offense—receiving stolen property—was not a violent felony under section 667.5. Thus, former section 2933 governed Brown's presentence custody credits. Under former section 2933, subdivision (e)(3), Brown's conduct credits were to be calculated under section 4019.²

As mentioned above, Brown committed his crime and was arrested on May 5, 2011. He was sentenced on March 6, 2012. In October 2011, section 4019 was amended pursuant to the Criminal Justice Realignment Act of 2011. The prior version of section 4019, subdivision (f) provided: "It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody." The current, amended section 4019, subdivision (f) provides: "It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody."

Although Brown was sentenced after section 4019 was amended, section 4019, subdivision (h) provides: "The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." Brown's crime was committed before

² Former section 2933, subdivision (e)(3) applied because Brown's offense was a serious felony as defined in section 1192.7, subdivision (c)(28), due to the gang enhancement, and because he had a prior strike.

October 1, 2011. Thus, he is only entitled to a credit of two days for every four days spent in actual presentence custody.

Brown contends we should interpret section 4019, subdivision (h) as requiring the court to calculate his custody credits at two different rates based on the time he spent in custody before October 1, 2011, and the time he spent in custody between October 1, 2011 and March 2012, when he was sentenced. We disagree. As explained in *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1553 (*Ellis*), “the Legislature’s clear intent was to have the enhanced rate apply *only* to those defendants who committed their crimes on or after October 1, 2011. (See *People v. Lara* [2012] 54 Cal.4th [896], 906, fn. 9.) The second sentence does not extend the enhanced rate to any other group, but merely specifies the rate at which all others are to earn conduct credits. So read, the sentence is not meaningless, especially in light of the fact the October 1, 2011, amendment to section 4019, although part of the so-called realignment legislation, applies based on the date a defendant’s crime is committed, whereas section 1170, subdivision (h), which sets out the basic sentencing scheme under realignment, applies based on the date a defendant is sentenced.” (*Ellis*, at p. 1553.)

We adopt the *Ellis* court’s reasoning. (See also *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 51-53.) Using the version of section 4019 in effect at the time Brown committed his crime, he was entitled to a total of 152 days of conduct credit. (Former § 4019, subd. (f); *In re Marquez* (2003) 30 Cal.4th 14, 25-26.) Thus, the judgment must be modified to reflect an additional 107 days of conduct credit, for a total of 413 days of presentence credits.

DISPOSITION

The judgment is modified to reflect an additional 107 days of presentence conduct credit. The trial court is directed to amend the abstract of judgment to reflect the corrected presentence custody credits and forward copies to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.